IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 16111 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AIR COMMAND INDIA LTD.

Versus

BHUPENDRA CHOTALAL DOSHI

Appearance:

1. Special Civil Application No. 16111 of 2003

MR HASIT DILIP DAVE for Petitioner No. 1

MRS SANGEETA N PAHWA for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 02/12/2004

ORAL JUDGEMENT

#. Rule. Mr.Navin Pahwa, learned advocate waives service of rule for the respondent.

#. In this petition filed under Article 227 of the Constitution of India, the petitioner has challenged the legality and validity of the order passed by the learned Civil Judge (Senior Division), Vadodara in Special Civil Suit No.1043 of 2000 below Exh.5 dated 25.8.2003 allowing the said application and attached the property of the petitioner company.

#. Mr.Hasit Dave, learned advocate appearing for the petitioner, has submitted that, in fact, proceedings are pending before the BIFR and the case of the petitioner company is registered under the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985 in pursuance of the judgment and order dated 30.7.2003 passed by the Appellate Authority for Industrial and Financial Reconstruction, New Delhi in Appeal No.319 of 2002. Under the circumstances, Mr.Dave submitted that in view of the provisions of the aforesaid Act, more particularly, Section 22 of the Act, the proceedings against the petitioner company is required to be proceeded further and not the suit with regard to recovery of the amount against the petitioner company can be proceeded further and/or any proceedings can be initiated.

#. Mr.Navin Pahwa, learned advocate appearing on behalf of the respondent - original plaintiff, has submitted that at the relevant time the application Exh.5 was heard by the learned trial Court and the petitioner company did not produce any cogent evidence with regard to registration of their case with the BIFR under the aforesaid provisions, and, therefore, the trial Court passed the order below Exh.5.

#. Heard the learned advocates for the parties.

#. By judgment and order dated 30.7.2003 passed by the appellate authority for Industrial and Financial Reconstruction, New Delhi in Appeal No.319 of 2002, the petitioner company is declared to be sick industrial company in terms of section 3(1)(o) of the Act and the case is remanded to the BIFR for further action in accordance with law and the case is pending before the BIFR. It is true that the trial court has observed in its order that no cogent evidence is produced by the petitioner company with regard to pendency of their case before the BIFR. However, in view of the fact that now the petitioner company has already produced the order passed by the appellate authority showing that the petitioner company is declared as sick industrial company and the case is pending before the BIFR, it will be in

the fitness of things to direct the petitioner company to approach the learned trial Court for modification and/or vacating of the order below Exh.5 dated 25.8.2003 passed in Special Civil Suit No.1043 of 2000 along with all necessary documents showing that the company is declared to be sick industrial company and to show that the proceedings are pending before the BIFR along with necessary averments and / or proceedings to show that the petitioner company has complied with the direction issued by the appellate authority issued in its judgment and order dated 30.7.2003 passed in Appeal No.319 of 2002 within a period of four weeks from today and on such application being made, the trial Court is directed to consider the same and consider the question of modification and/or vacating the order below Exh.5 dated 25.8.2003 in the aforesaid Special Civil Suit No.1043 of 2000 after hearing all the concerned parties. It will be open for the petitioner to proceed further with their application which is submitted by the petitioner for stay of the suit and the same can also be considered by the trial Court on its own merits and in accordance with law. Until any appropriate decision is taken by the trial Court on the application that may be submitted by the petitioner, ad-interim relief granted earlier by this Court is directed to be continued and the trial Court is directed to consider the said application within a period of two months from the date of filing of the application, as stated above. The trial Court is also directed to consider the said application on its own merits, as stated above and without being influenced by the fact that this Court has continued the interim relief, as stated above.

#. In view of the above, this petition is allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

(M.R.Shah,J)

(pathan)